SCR.A/911/2005 1/5 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 911 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI HATHIBHAI NARJIBHAI PATEL - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR PR NANAVATI for Petitioner No(s).: 1.

Mr.Gohil, Addl.PUBLIC PROSECUTOR for Respondent No(s).: 1.

NOTICE SERVED BY DS for Respondent No(s).: 2.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 17/08/2005

ORAL JUDGMENT:

1.Rule. Mr.Gohil, Ld.APP waives service of rule on behalf of the State. With the consent of learned advocates for parties matter is taken up for final hearing today.

2. The petitioner has preferred this petition for directing the respondent to carry out the investigation in connection with the complaint vide CR No.I-93/2 by an independent agency of CBI or CID(Crime) under the supervision of an officer not below the rank of Dist.Superintendent of Police.

3. Upon hearing Mr.Nanavaty for the petitioner and Mr.Gohil, Ld.APP for the respondent-State, it appears that there is no dispute on the factual aspect that further investigation under section 173(8) is ordered by the court below. It is the say of the petitioner herein that the investigation by the very agency which investigated the matter earlier may not result into proper investigation in connection with the alleged crime. It has been submitted on behalf of the petitioner by Mr.Nanavaty that as such it is an offence under section under section 302 I.P.C. He submitted that the offence under section 302 can be made out from the photograph and the other incidental evidences. Therefore, he submitted that unless there is proper investigation by an expert agency the truth may not come out. He has also submitted that as the trial has reached to the evidence stage for the alleged offence under section 306 IPC, the trial may be

stayed until the report is submitted after further investigation and he submitted that the accused in connection with the offence are already released on bail and therefore if the trial is stayed for some time no serious prejudice will be caused to the accused or to the State, as the case may be.

4. Mr.Gohil, Ld.APP for the State submitted that as such the investigation is properly made and as per the investigation made, the offence under secction 306 IPC is made out and charge sheet is filed for such purpose and the trial is to be completed. He submitted that if further investigation is ordered by the court by the CPI, Khedbrahma, by the very officer who investigated into the matter. However, he also stated that there is no objection if the court is desirous to entrust the investigation to some other authority, namely, CID(Crime) or any other officer as it may deem fit and proper by the court.

5. Considering the above, it appears that when the further investigation is already ordered under section 173(8) of Cr.P.C., it is not necessary that in every case the court may order for further investigation through the officer other than the officer who investigated the matter. However,

considering the peculiar facts and circumstances of the case, that the matter may be required to be investigated taking into consideration the circumstantial evidence and the truth is required to be explored to the extent that whether it is really a case of suicide or homicide. Therefore, if some expert agency is entrusted with further investigation like CID(Crime), same shall be in the interest of justice and it would also serve the purpose for ordering further investigation taking into consideration the facts and circumstances of the present case. It appears that the aforesaid aspects ought to have been considered by the Ld.Sessions Judge while considering the matter for ordering further investigation and since the said aspect is not considered, the order passed by the Ld.Sessions Judge deserves to be interfered with to that extent.

6. In view of the above, the order passed by the Ld.Sessions Judge directing further investigation shall stand modified only to the extent that in place of CPI, Khedbrahma, the officer of CID(Crime) who may be nominated by the Dist.Superintendent of Police shall further investigate into the matter and shall complete the investigation as early as

possible within a period of two months from the date of receipt of writ of this court and the consequential report shall be submitted to the trial court. It may be stated that further investigation, may be either of confirming the charge as alleged earlier or for the supplementary charge sheet. However, until such report is submitted, the trial of the Sessions Case No.29/03 pending before the Addl.Sessions Judge, Sabarkantha at Himmatnagar shall remain stayed.

7. Petition is partly allowed to the aforesaid extent. Rule is made absolute accordingly.

DS permitted.

(JAYANT PATEL,J)

17.8.05